



POLICE DEPARTMENT

April 14, 2009

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer Timothy Moore
Tax Registry No. 930766
113 Precinct
Disciplinary Case No. 82886/07

Police Officer John Moran
Tax Registry No. 916271
Patrol Borough Queens South
Disciplinary Case No. 82883/07

Sergeant Juan Lopez
Tax Registry No. 920518
101 Precinct
Disciplinary Case No. 82806/07

The above-named members of the Department appeared before me on November 25, 2008, charged with the following:

Disciplinary Case No. 82886/07

1. Said Police Officer Timothy Moore, assigned to the 113 Precinct, on or about April 7, 2006, while on duty, within the confines of the 113 Precinct, did fail and neglect to render police services in said officer's assigned area, to wit: the said officer did not properly investigate a missing person complaint report, in that said officer only assisted in the submission of a Domestic Incident Report and failed to take any other police action with regard to said complaint report.

P.G. 208-36, Paragraphs 2-6, 9, 13, 14, 16-20 – POLICE OFFICER DUTIES
AND RESPONSIBILITIES

P.G. 203-21, Page 1, Paragraph 8

2. Said Police Officer Timothy Moore, assigned to the 113 Precinct, on or about April 7, 2006, while on duty, within the confines of the 113 Precinct, failed and neglected to conduct a proper missing person investigation, in that said officer did not request a

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patrol supervisor to respond and did not notify the desk officer of the details of the complaint report.

P.G. 207-23, Page 2, Paragraphs 2& 3 – DUTIES AND RESPONSIBILITIES

Disciplinary Case No. 82883/07

1. Said Police Officer John Moran, assigned to the 113 Precinct, on or about April 7, 2006, while on duty, within the confines of the 113 Precinct, did fail and neglect to render police services in said officer's assigned area, to wit: the said officer did not properly investigate a missing person complaint report, in that said officer only assisted in the submission of a Domestic Incident Report and failed to take any other police action with regard to said complaint report.

P.G. 208-36, Paragraphs 2-6, 9, 13, 14, 16-20 – POLICE OFFICER DUTIES
AND RESPONSIBILITIES

P.G. 203-21, Page 1, Paragraph 8

2. Said Police Officer John Moran, assigned to the 113 Precinct, on or about April 7, 2006, while on duty, within the confines of the 113 Precinct, failed and neglected to conduct a proper missing person investigation, in that said officer did not request a patrol supervisor to respond and did not notify the desk officer of the details of the complaint report.

P.G. 207-23, Page 2, Paragraphs 2& 3 – DUTIES AND RESPONSIBILITIES

Disciplinary Case No. 82806/07

1. Said Probationary Sergeant Juan Lopez, assigned to the 113 Precinct, on or about April 7, 2006, while on duty, within the confines of the 113 Precinct, signed a Domestic Incident Report containing allegations of serious offenses, without properly examining or ensuring its proper completion, when said Domestic Incident Report contained material errors or omissions thereon. (*As amended*)

P.G. 202-14, Page 2, Paragraph 19 – DESK OFFICER

2. Said Probationary Sergeant Juan Lopez, assigned to the 113 Precinct, on or about April 7, 2006, while on duty, within the confines of the 113 Precinct, failed to conduct or to direct police operations within the command during his tour, to wit: during his assigned tour, said probationary sergeant, upon reading a Domestic Incident Report containing allegations of serious offenses, did not direct officers under his supervision to further investigate said offenses. (*As amended*)

P.G. 202-14, Page 2, Paragraph 3 – DESK OFFICER

The Department was represented by Stephen Bonfa, Esq., Department Advocate's Office. Respondent Moore and Respondent Moran were represented by John Tynan, Esq. Respondent Lopez was represented by Philip Mellea, Esq.

The Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 82886/07

Respondent Moore is found Guilty of Specification No. 1 and Not Guilty of Specification No. 2.

Disciplinary Case No. 82883/07

Respondent Moran is found Guilty of Specification No. 1 and Not Guilty of Specification No. 2.

Disciplinary Case No. 82806/07

Respondent Lopez is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Thomas Evans as its sole witness.

Lieutenant Thomas Evans

Evans is currently assigned to the Patrol Services Bureau's Investigation and Evaluation Section. He testified that on June 1, 2006, a six-month old baby was dropped off at Jamaica Hospital with a fractured skull, a broken clavicle, and third-degree burns.

The baby's father was [REDACTED] and his mother was [REDACTED]

[REDACTED] The resulting investigation revealed that on April 6, 2006, a Police Officer DeMarco and Police Officer George responded to a radio run for a missing [REDACTED] at the [REDACTED] residence. At 9:58 p.m., those officers finalized the job as "unnecessary." Six minutes later, another job came over the radio for a missing [REDACTED]. For the second time, DeMarco and George immediately gave a disposition of unnecessary. At approximately 12:30 a.m. on April 7, 2006, Respondent Moore and Respondent Moran responded to a third call at the [REDACTED] residence. They prepared a Domestic Incident Report (DIR).

When asked to describe any irregularities on the DIR, Evans testified that there are two sections on the form that were not completed. These sections consist of yes/no questions: Prior domestic violence history?, Prior domestic violence police report?, Victim fearful?, Access to weapons?, Does the suspect have a drug or alcohol history?, Does the suspect have a history of suicide threats?, Is the suspect on probation or parole?, Was the registry checked?, Is there an order of protection?, Is there a stay-away order?, Was an order violated?, Were there any prior orders?. For all of these questions, neither the "yes" box nor the "no" box was marked. (The fact that there was an Order of Protection involved in this case was, however, written in the section labeled "Results of Investigation." The order number and date of issuance were also given in that section. In

addition, it was noted on the DIR that the Order of Protection was issued in Criminal Court.) Evans testified that it would have been important to the case to know the answers to these questions. It was noted on the report that an arrest was not made because the suspect was not at the scene. According to Evans, [REDACTED] child-in-common should have been listed in the section entitled "Associated Persons." (The fact that there was a child-in-common was, however, noted in the section labeled "Living Situation.") Evans testified that it would have been important to know that there was an infant child involved in the situation. Although the document consisted of two pages, the first page was labeled "page 1 of 1." There is not a page number written in the second page, which is the page for the "Statement of Allegations/Supporting Deposition." Evans stated that neither Respondent Moore nor Respondent Moran requested the response of the patrol supervisor, notified the desk officer of the situation, went to the suspect's house even though the name and address of the suspect [REDACTED] were written on the report, or contacted the precinct in which [REDACTED] house was located. All that they did, according to Evans, was prepare the DIR, canvass the [REDACTED] residence, and verify on the computer that there was an active order of protection. The DIR was signed by Respondent Moore.

At a later date, Evans spoke with [REDACTED] [REDACTED] who had prepared the supporting deposition for the April 7, 2006 DIR. [REDACTED] told Evans that before Respondent Moore and Respondent Moran arrived at the residence, DeMarco and George had responded to the location and informed her that if they went to [REDACTED] house they could not make [REDACTED] get them inside. DeMarco and George recommended to Veronica that a family member go to [REDACTED] house to confirm that [REDACTED] were there together. When [REDACTED] brother confirmed that [REDACTED] were, in fact,

both at [REDACTED] house, he called 911. The 911 call is what resulted in the second "unnecessary" disposition transmitted by DeMarco and George. [REDACTED] did not tell Evans anything about her interaction with Respondent Moore and Respondent Moran.

As part of his investigation, Evans also spoke with Devora Watson. Watson told Evans that she was present when the police came to the [REDACTED] residence, but she was confused about the date of occurrence. She told Evans that when the police arrived at the location, they were given Katrina's age and shown an Order of Protection. According to Watson, the police were also informed that [REDACTED] and the baby were at [REDACTED]. Evans testified that the events described by Watson were consistent with the DIR prepared on April 7, 2006.

Evans testified that the DIR was dropped off in the basket on the desk at the 113 Precinct station house. Respondent Lopez ultimately signed off on it. According to Evans, Lopez, as desk sergeant, was responsible for reviewing the document for accuracy and completeness. Evans testified that Lopez should have conducted an investigation to find out the information that was missing on the report. Lopez neither conducted an investigation nor instructed anybody else to conduct an investigation before signing the report. After Lopez signed the report, it was forwarded to the 113 Precinct Domestic Violence Unit.

[Department's Exhibit 1 is a copy of the DIR, dated April 7, 2006. The second page of the DIR consists of the Supporting Deposition prepared by [REDACTED]. In the deposition, [REDACTED] wrote, [REDACTED] "How she is violates court order. . . [REDACTED] continues to be with the guy and she will not stay away from him."]

The Assistant Department Advocate explained that the complaining witnesses, [REDACTED] and [REDACTED] indicated the day before trial that they could not get off work to appear at trial. They were also unable to appear for a previously scheduled trial date. Between the two trial dates, each of the witnesses was notified on six occasions to appear in court. These notifications included subpoenas sent by certified mail.

On cross-examination, Evans testified that he did not show any photographs to [REDACTED] and [REDACTED] to see if they could identify the Respondents. He did not ask the witnesses whether they reiterated to the Respondents what they told DeMarco and George earlier in the night. When asked if either [REDACTED] or [REDACTED] had any recollection of what actually occurred when Respondent Moore and Respondent Moran responded to the [REDACTED] residence on April 7, 2006, Evans testified that both witnesses "were a little sketchy on whatever date it was." Although the job that brought Respondent Moore and Respondent Moran to the [REDACTED] residence that night was originally called into 911 as a missing person, it was transmitted over the radio as a "10-52" dispute to the Respondents. Evans did not know if any of the officers were told that night that [REDACTED] had been charged with raping [REDACTED]. Since the baby's birth, members of the precinct had responded to the [REDACTED] residence approximately seven times. At no point in the supporting deposition did [REDACTED] write that [REDACTED] was harassing or annoying [REDACTED]. Although [REDACTED] address was listed on the DIR, there was no indication of exactly where or when the violation of the Order of Protection occurred. [REDACTED] and [REDACTED] told Evans that they sometimes did not call the police when they saw [REDACTED] and [REDACTED] together. [REDACTED] residence was located outside of the 113 Precinct.

Evans testified that police officers can travel outside of their precincts if they let the precinct supervisor know.

After the DIR was forwarded to the 113 Precinct Domestic Violence Unit, the domestic violence sergeant (Sergeant Smolarsky) signed off on the report without initiating an investigation. Although [REDACTED] would be classified as the victim in this case, her aunt and her grandmother were the only people to complain about [REDACTED]

On redirect examination, Evans testified that his investigation revealed that Respondent Moore and Respondent Moran did not conduct any type of investigation to determine whether or not or exactly when the Order of Protection was violated.

The Respondents' Case

The Respondents testified in their own behalf.

Respondent Police Officer Timothy Moore

Respondent Moore, a seven-year member of the Department, is currently assigned to the 113 Precinct. On April 6, 2006, he and Respondent Moran started work at 11:15 p.m. At roll call that day, they were not given any information about the [REDACTED] residence. Shortly after roll call, they responded to a job at the [REDACTED] residence that came over the radio as a dispute between a mother and a daughter. The radio dispatcher did not give any further information about the job. [REDACTED] let the officers into the house. Respondent Moore testified that he did not see anybody else at the location.

[REDACTED] proceeded to tell Respondent Moore that [REDACTED] mother was upset with [REDACTED] because [REDACTED] would stay out with her boyfriend, [REDACTED] Respondent Moore

then returned to his vehicle to see on the computer if an Order of Protection had been issued to [REDACTED]. After learning that [REDACTED] had an Order of Protection against [REDACTED], Respondent Moore went back to the house to prepare a DIR. Neither [REDACTED] nor [REDACTED] was present at the scene. Respondent Moore instructed [REDACTED] to write in the supporting deposition everything that occurred that night. [REDACTED] did not say anything in the deposition about [REDACTED] affirmatively doing anything to [REDACTED]. [REDACTED] did not tell Respondent Moore the last time she had seen [REDACTED] or anything about [REDACTED] coming to the residence that day. Nobody informed Respondent Moore that other officers had responded to the residence earlier in the night.

Respondent Moore testified that a police officer is not required to request the response of a supervisor whenever a DIR is prepared. He stated that he would call a supervisor to the scene of a dispute "if there was a substantial charge or a violation of any sort." There were no charges to be filed, though, based on what he observed at the [REDACTED] residence on April 7, 2006. During the course of his career, he has prepared more DIRs than he can recall. In April 2006, the Department was using a new DIR form. He explained that there were certain questions on the form that he usually asked the victim. Because [REDACTED] was not present at the scene to provide answers, he did not fill in answers for the questions concerning the prior domestic violence history, whether the victim was fearful, whether there was access to weapons, and whether the suspect had a drug or alcohol history, a history of suicide threats, or was on probation or parole. When he finished with the report, Respondent Moore gave a copy of it to [REDACTED] mother. [REDACTED] mother did not indicate at that time that she saw anything wrong with the report.

Respondent Moore spent approximately 20 minutes at the location. He transmitted a final disposition for the job at approximately 1:00 a.m. Upon his return to the command, Respondent Moore put the DIR in the basket on the desk. According to Respondent Moore, there were no special circumstances about the case that would have required him to notify the desk officer. He stated that he did not believe he knew at the time that [REDACTED] had been charged with rape in the third degree. Based on what he knew at that time, there was nothing about the case that would have required him to notify a supervisor or conduct further investigation. Similarly, because there were no charges filed or further investigation necessary, he did not seek permission to travel to the 105 Precinct, which is where [REDACTED] residence was located.

On cross-examination, Respondent Moore conceded that the DIR he prepared was not entirely completed. He testified that from speaking with [REDACTED] he knew that [REDACTED] was 16-years-old, there was a baby involved, [REDACTED] and the baby were not at home and may have been 15 blocks away at [REDACTED] house, [REDACTED] had previously been arrested for statutory rape, and [REDACTED] had been issued an Order of Protection with a stay-away provision against [REDACTED]. He continued that even though he possessed this information, he did not believe that any type of violation or offense had occurred. According to Respondent Moore, an arrest would have been made had [REDACTED] been present with [REDACTED]. Respondent Moore never spoke with Respondent Lopez about the case.

Respondent Police Officer John Moran

Respondent Moran, a 14-year member of the Department, is currently assigned to the Patrol Borough Queens South Evidence Collection Team. In 2006, he worked in the

113 Precinct with Respondent Moore. On April 6, 2006, he and Respondent Moore started work at 11:15 p.m. They responded that night to a radio run involving a dispute between a mother and daughter at the [REDACTED] residence. Respondent Moran had not been given any information about the situation prior to his arrival at the location.

[REDACTED] let the officers into the house. Respondent Moran did not see anybody else in the house as he and Respondent Moore spoke with [REDACTED] [REDACTED] told the officers about [REDACTED]. After the officers learned that [REDACTED] had been issued an Order of Protection against [REDACTED] they prepared a DIR. He could not recall if at any point Veronica told them when she last saw [REDACTED]. He testified that although [REDACTED] provided them with [REDACTED] address, she did not tell them exactly where [REDACTED] was located. Similarly, according to Respondent Moran, at no point was it specifically alleged that the Order of Protection was being violated. [REDACTED] address was located outside the confines of the 113 Precinct. Respondent Moore testified that he did not respond to that address to see if [REDACTED] was there because there was no reason to do so. He explained that it was merely a family dispute, as no criminal act had been alleged. Similarly, according to Respondent Moran, a Missing Persons Report was not prepared because nobody said anything about a missing person. [REDACTED] did not tell the officers that [REDACTED] ran away or left home for good. According to Respondent Moran, [REDACTED] did not say anything to indicate that [REDACTED] was in danger. [REDACTED] was not overly excited or upset. Respondent Moran explained that a supervisor was not called to the scene because no crime had been committed and there was no need for further investigation. When giving the radio dispatcher a final disposition for the job, Respondent Moran classified the job as a non-criminal family dispute. Upon their return

to the command, the DIR was placed in the basket at the desk. They did not speak to the desk officer about the case. Respondent Moran had prepared many DIRs during the course of his career. He has never been called back to the desk to explain anything he entered on a DIR.

On cross-examination, Respondent Moran testified that Respondent Moore was the one who asked [REDACTED] questions. Although he could not recall if he asked any questions himself, he stated that he and Respondent Moore shared equal responsibility for conducting the investigation. At one point, he reviewed the DIR and noticed that there was information missing. He stated that the DIR form was brand new at the time, and he had not been trained on how to fill it out. He did not do anything to correct any errors on the report.

Respondent Moran testified that he knew on the date of the incident that [REDACTED] was 16-years-old, there was an baby involved, [REDACTED] and the baby were not at home, [REDACTED] had been issued a Criminal Court Order of Protection with a stay-away provision against [REDACTED] and [REDACTED] lived approximately fifteen blocks away in another precinct. According to Respondent Moran, he could not recall if he knew at the time that [REDACTED] had been arrested for statutory rape, but he may have been aware of that fact. He conceded that a police officer is required to take some kind of action when he becomes aware that a criminal act, such as a violation of an Order of Protection, is occurring beyond the confines of his assigned precinct. According to Respondent Moran, based on the information he received at the [REDACTED] residence that night, he could not conclude that an Order of Protection was being violated. He explained that although he knew from [REDACTED] that [REDACTED] could potentially be at [REDACTED] residence, [REDACTED] did not provide

a specific date or time that the order of protection was being violated. Respondent Moran did not take any follow-up steps to determine whether or not the Order of Protection was, in fact, being violated. Nor did he notify the patrol supervisor or desk officer about the [REDACTED] case.

On redirect examination, Respondent Moran testified that in order to file a violation of an Order of Protection, the party who has the order must be present. Respondent Moran never spoke with [REDACTED]

On recross-examination, Respondent Moran stated that had he gone to [REDACTED] residence and seen [REDACTED] and [REDACTED] together at that location, it would have been a violation of the order.

Upon questioning by the Court, Respondent Moran testified that [REDACTED] told the officers that [REDACTED] and [REDACTED] were together at [REDACTED] house. [REDACTED] did not say that [REDACTED] was missing.

Respondent Sergeant Juan Lopez

Respondent Lopez, an 11-year member of the Department, is currently assigned to the 101 Precinct. He was promoted to the rank of sergeant in December 2005. On April 7, 2006, he was assigned as the 113 Precinct desk officer from 2:50 p.m. until 11:47 p.m. Because Respondent Moore and Respondent Moran worked a different tour that day, Respondent Lopez was not their supervisor. Respondent Lopez was not certain if Smolarsky, the domestic violence sergeant, was working that day. Respondent Lopez stated that while the desk officer at the 113 Precinct is responsible for signing DIRs, the desk officer at the 101 Precinct is not. He explained that the 101 Precinct desk officer

does not do anything with DIRs because the command's domestic incident unit deals with the reports. This is because the personnel assigned to the domestic incident unit are most familiar with the domestic cases in the precinct.

Respondent Lopez conceded that he signed the DIR that was prepared by Respondent Moore on April 7, 2006. Before signing, he reviewed the report and saw that a couple of the boxes on the form were empty. According to Respondent Lopez, the empty boxes would not have prevented an investigation had one been necessary in this case. After reading the whole report, though, the case seemed to him like a "run of the mill dispute between family members." After signing it, he placed it in a box for the 113 Precinct Domestic Violence Unit. Respondent Lopez stated that as of April 1, 2006, the state started to use a new DIR form. The DIR for [REDACTED] was the first time that he had ever seen the new form. The old DIR form was just one page, and Respondent Lopez did not know at the time that with the new form the supporting deposition was supposed to be attached. When asked why he did not initiate an investigation, Respondent Lopez responded, "Reading the facts on this report, this report was pretty much taken as a courtesy to [REDACTED]. [S]he has nothing to do with [REDACTED] who is the suspect. Specifically, there shouldn't have been a DIR done at all. DIRs are filled out between two people who fit the criteria of domestic couple." He stated that from his reading of the DIR in this case, no actual offense occurred.

On cross-examination, Respondent Lopez testified that as desk officer it is his duty to ensure reports have been prepared correctly. If a report is not correct, it is his obligation to have it fixed. He conceded that in a section labeled "Offenses Involved," no box was marked. (There are boxes in this section for felony, misdemeanor, violation, and

other.) In a section labeled "Suspect Actions," only the box for "other" was marked. There is a space for an explanation, but none was provided. A section labeled "Threats" and another section on domestic violence history were also left blank. Respondent Lopez stated that although it was noted on the report that there was an Order of Protection between [REDACTED] and [REDACTED] there was no indication that the order was being violated. Similarly, there was no indication that the case involved a missing person. According to Respondent Lopez, the supporting deposition prepared by [REDACTED] was not attached to the DIR when he reviewed the report. He testified that in the 113 Precinct only the administrative lieutenant had access to the contact information for the officers assigned to the precinct. Had he wanted to contact Respondent Moore and Respondent Moran while they were off duty he could have left a note for the administrative lieutenant. In addition, he could have ordered officers on duty at that time to make a further investigation, but he did not do so because he did not think it was necessary. Respondent Lopez signed the report approximately 20 hours after it was prepared by Respondent Moore. He conceded that he should have reviewed the report better.

Upon questioning by the Court, Respondent Lopez testified that the midnight tour in the 113 Precinct is very hectic.

On recross-examination, he reiterated that there were omissions on the report. He conceded that no matter how busy the precinct was that night, it was his job to ensure the report was filled out correctly.

Upon continued questioning by the Court, Respondent Lopez testified that he did not see in the report any indication of criminal activity that needed to be addressed. He continued, "By what is written in [the] report, there was nothing. . . . [T]he court order

was not being violated by what is written on the paper. It is not stated they are together at this point. It doesn't say the court order is being violated."

On continued recross-examination, Respondent Lopez testified that it was indicated on the DIR that an arrest was not made because the suspect was not at the scene. "Suspect off-scene" was marked off instead of other possible explanations, which included "No offense committed" and "No probable cause."

FINDINGS AND ANALYSIS

Disciplinary Case Nos. 82886/07 & 82883/07

Respondent Moore and Respondent Moran stand charged with failing to conduct a proper missing person investigation, in that they did not request a patrol supervisor to respond and did not notify the desk officer of the details of the complaint report. I find Respondent Moore and Respondent Moran Not Guilty of this Specification. The facts and circumstances of this matter did not trigger the application of the missing persons section of the Patrol Guide. Although [REDACTED] called 911 with the complaint of a missing person, the job was transmitted over the radio as a "10-52" dispute. When the Respondents arrived at the [REDACTED] residence, they were unaware that officers from the previous tour had responded to the same residence for missing person calls. Without [REDACTED] present at trial to provide her version of the conversation with the Respondents, there is no ground to question Respondent Moran's testimony that [REDACTED] said nothing about [REDACTED] being missing. The supporting deposition prepared by [REDACTED] is consistent with the Respondents' belief that [REDACTED] underlying concern was [REDACTED] continued association with [REDACTED] not a fear that [REDACTED] a minor, might be missing.

In addition, upon questioning by the Court, Respondent Moran testified that [REDACTED] informed them that [REDACTED] was at [REDACTED] residence. Thus there was no belief that [REDACTED] was a missing person. Based on these facts, it is understandable why the Respondents did not think to request the response of a patrol supervisor and notify the desk officer, as per Patrol Guide section 207-23 "Missing Persons." After all, not everytime a teenager leaves the house without her guardian's approval is the Department procedure for missing persons automatically triggered.

Respondent Moore and Respondent Moran also stand charged with failing to properly investigate a missing person complaint report, in that they only assisted in the submission of a DIR and failed to take any other police action with regard to said complaint report. I find the Respondents Guilty of this Specification. Although the Respondents may not have been obligated to adhere to the Department procedure for missing persons, [REDACTED] case certainly called for the taking of police action other than preparing a report. Both Respondents conceded that they knew at the time that [REDACTED] was 16-years-old, there was a baby involved, both [REDACTED] and the baby were not at home and may have been at [REDACTED] [REDACTED] had previously been arrested for statutory rape, and [REDACTED] had been issued an Order of Protection with a stay-away provision against [REDACTED]. The Respondents testified that, nevertheless, they did not believe that any offense had been committed and there was no need for further investigation.

The Court believes that the Respondents misanalyzed the circumstances of the case. Based on what they were told by [REDACTED] the Respondents had reason to suspect that an Order of Protection was presently being violated and, thus, the felony of criminal contempt was being committed because [REDACTED] was very likely at [REDACTED] residence. In

addition, even though [REDACTED] voluntarily continued her association with [REDACTED] the association arguably posed an imminent threat to her, given the fact that she was below the age of consent and [REDACTED] had been charged with statutory rape. [REDACTED] provided the Respondents with [REDACTED] address, and for the above reasons the Respondents should have ensured that police personnel responded to that location. Because [REDACTED] residence was outside the confines of the 113 Precinct, the Respondents could have either asked permission from a supervisor to visit the location themselves or they could have contacted [REDACTED] resident precinct about having a unit from that command visit instead.

Based on the foregoing, Respondent Moore and Respondent Moran are found Guilty of Specification No 1 and Not Guilty of Specification No. 2.

Disciplinary Case No. 82806/07

Respondent Lopez stands charged with signing a DIR containing allegations of serious offenses without examining or ensuring its proper completion. Respondent Lopez acknowledged that there were several boxes on the DIR that were not completed. Sections labeled, "Offenses Involved," "Threats" and domestic violence history were all left blank on the form. Respondent Lopez admitted that he could have left a note for the administrative lieutenant to reach out to Respondent Moore and Respondent Moran who were off duty at the time if he needed additional information before signing the report. Respondent Lopez acknowledged that he could have done a better review of the DIR. Patrol Guide section 202-14 lists several of the duties and responsibilities of a desk officer which include in paragraph 19:

Examine and sign forms and reports as required. (Emphasis added).

It is clear from the information contained on the DIR that [REDACTED] is accused of violating an Order of Protection by continuing to see [REDACTED] an underage female. The offense would be criminal contempt and Respondent Lopez could have made sure that that aspect of the DIR was completed before he signed it. Instead he simply thought the DIR was a "run of the mill dispute between family members" and he did nothing with the report. The fact that the DIR was a new form and that on this date it was the first time Respondent Lopez had reviewed it does not obviate his responsibility as a supervisor to ensure that it is complete before he places his signature on an official Police Department document.

Respondent Lopez is also charged with failing to direct officers under his supervision to further investigate the offenses contained in the DIR. As stated from a review of the DIR, [REDACTED] appeared to be in violation of a court Order of Protection with a stay-away provision to refrain from contact with [REDACTED]. No effort to reach out to [REDACTED] was made. No arrest was made because he was not at the scene. However, the DIR noted [REDACTED] residence. Respondent Lopez could have directed officers under his supervision to go out to the location and see if the Order of Protection was being violated, to see if [REDACTED] was at his residence even if he reviewed the DIR 20 hours after it was prepared. Respondent Lopez could have made a call to the resident precinct where [REDACTED] lived to have them investigate and send a patrol car to [REDACTED] residence to see if he was in violation of the court order. Instead Respondent Lopez took no action with respect to the DIR.

Accordingly, I find Respondent Lopez Guilty of Specification Nos. 1 and 2.

PENALTY

In order to determine an appropriate penalty, the Respondents' service records were examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

Respondent Moore was appointed to the Police Department on July 1, 2002. Respondent Moran was appointed to the Police Department on June 30, 1995. Respondent Lopez was appointed to the Police Department on December 8, 1997. Information from their personnel records that was considered in making this penalty recommendation is contained in the attached confidential memoranda.

Respondent Moore and Respondent Moran have each been found Guilty of failing to properly investigate a missing person complaint report, in that they only assisted in the submission of a DIR and failed to take any other police action with regard to said complaint report. Respondent Moore acknowledged at trial that he knew the case involved Katrina, a 16-year-old girl, who was not at home, that there was a baby involved, that [REDACTED] was likely at [REDACTED] house 15 blocks away, that [REDACTED] had been previously arrested for statutory rape, and that [REDACTED] had been issued an Order of Protection with a stay-away provision against [REDACTED]

Respondent Moran testified that he knew the same information, except that he could not recall whether he knew that [REDACTED] had been arrested for statutory rape. He stated that he had reviewed the DIR and conceded that a police officer is required to take some kind of action when he becomes aware that a criminal act, such as the violation of an Order of Protection is taking place beyond the confines of his assigned precinct. Although Respondent Moran argued that he could not be certain that the Order of Protection was being violated, he had an obligation based on the information that he had

ascertained to investigate whether it was. I credit the fact that Respondent Moore and Respondent Moran prepared a DIR outlining the situation, but they could have done some investigation.

Accordingly, I recommend that both Respondent Moore and Respondent Moran forfeit eight vacation days.

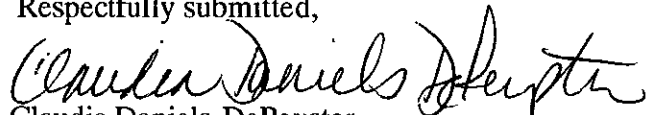
Respondent Lopez has been found Guilty of signing a DIR containing allegations of serious offenses without examining or ensuring its proper completion. He has also been found Guilty of reading a DIR containing allegations of serious offenses and did not direct officers under his supervision to further investigate said offenses. Respondent Lopez conceded at trial that before signing the DIR, he saw that a couple of the boxes on the form were empty. He concluded that the empty boxes would not have prevented an investigation had one been necessary but that this matter was a "run of the mill dispute between family members." This Court agrees that the DIR contained enough information to not hinder the commencement of an investigation. However, as this Court has concluded, this DIR involved a potential violation of a stay-away Order of Protection by [REDACTED] an adult male against [REDACTED] a minor female. Had Respondent Lopez carefully reviewed the report before signing it, he may have seen the need to at least complete the portion of the form that referred to "offenses" and realized that an Order of Protection may be violated and that further investigation was needed such as sending a unit out to [REDACTED] residence to see if he was in violation of the Order of Protection.

Respondent Lopez acknowledged his error in judgment in open court. In addition, this Court took into consideration that at the time of the incident, April 7, 2006, Respondent Lopez was a probationary sergeant in the rank for approximately four months

and may not have thoroughly understood the ramification or his responsibilities when signing a Police Department report. In addition, as stated above the DIR contained enough pertinent information to foster further investigation on the issue of whether the order of protection was currently being violated.


Accordingly, I recommend that with respect to Specification Nos. 1, and 2 that Respondent Lopez forfeit eight vacation days.

Respectfully submitted,


Claudia Daniels-DePeyster

Assistant Deputy Commissioner-Trials

APPROVED


JUL 22 2004
RAYMOND W. KELLY
POLICE COMMISSIONER